109

No. 08-236

Supreme Court, U.S.
FILED
OCT 22 2008
OFFICE OF THE CLERK

In The

Supreme Court of the United States

JAMES L. "JIMMY" FAHRENHOLTZ,

Petitioner,

vs.

CONRAD S.P. WILLIAMS, III, and
JAY DARDENNE, IN HIS OFFICIAL CAPACITY
AS LOUISIANA SECRETARY OF STATE,

Respondents.

On Petition For Writ Of Certiorari To The Louisiana Fourth Circuit Court Of Appeal

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI OF JAY DARDENNE

CELIA R. CANGELOSI
918 Government Street, Suite 101
P.O. Box 3036
Baton Rouge, LA 70821
(225) 387-0511
Counsel of Record

October, 2008

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

1. Whether this Court has jurisdiction under 28 U.S.C. § 1257 to review Petitioner's federal constitutional claim where Petitioner failed to properly present the constitutional claim to the state courts and the state court said "constitutionality is not an issue under review by this Court."

LIST OF ALL PARTIES

1. James L. "Jimmy" Fahrenholtz
   Defendant and Petitioner

2. Conrad S.P. Williams, III
   Plaintiff and Respondent

3. Jay Dardenne, in his official capacity as
   Secretary of State, State of Louisiana
   Defendant and Respondent

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
LIST OF ALL PARTIES	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
COUNTER-STATEMENT OF JURISDICTION	1
STATEMENT OF THE CASE	2
REASONS FOR DENYING THE WRIT	4
I. The Federal Question Posed Was Neither Properly Presented To Nor Decided By The State Court	4
CONCLUSION	6

TABLE OF AUTHORITIES

Page

FEDERAL CASES

Adams v. Robertson, 520 U.S. 83 (1997) 4

Cardinale v. Louisiana, 394 U.S. 437 (1933) 1

Exxon v. Eagerton, 462 U.S. 176 (1983) 1

Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983) 6

Webb v. Webb, 451 U.S. 493 (1981) 1

FEDERAL STATUTES

28 U.S.C. § 1257(a) 1, 4

U.S. Const., Art. I, § 2, cl. 2 ..... 1, 3

STATE STATUTES

La. R.S. 18:463 2

La. R.S. 18:492 2

La. R.S. 18:1402 2

OPINIONS BELOW

The list of lower court citations set forth at page 1 of the Petition does not include the citation for the Louisiana Supreme Court writ denial, *Williams v. Fahrenholtz*, 2008-1680 (La. 7/30/08), 986 So.2d 671.

COUNTER-STATEMENT OF JURISDICTION

Petitioner's STATEMENT OF THE CASE is incorrect when it asserts on p. 11 that "at trial, Fahrenholtz filed a Peremptory Exception of No Cause of Action asserting that . . . such application was an unconstitutional qualification on a congressional candidate in violation of U.S. Const., Art. I, § 2, cl. 2, . . . ". As noted by the Louisiana Fourth Circuit Court of Appeal (Petition, App. 5), "Mr. Fahrenholtz's first mention of unconstitutionality was in a memorandum and not in a pleading, hence, constitutionality is not an issue under review by this Court."

Respondent Dardenne submits that this Court does not have jurisdiction under 28 U.S.C. § 1257(a) because the purported federal question posed in the Petition For Writ of Certiorari was not decided by the state courts. Accordingly, federal question jurisdiction is lacking. *Exxon v. Eagerton,* 462 U.S. 176, 181, n. 3 (1983); *Webb v. Webb*, 451 U.S. 493, 497-500 (1981); *Cardinale v. Louisiana*, 394 U.S. 437, 438-439 (1933).

STATEMENT OF THE CASE

1. On July 11, 2008, Applicant, James L. "Jimmy" Fahrenholtz, filed a Notice of Candidacy for the office of United States Representative, Louisiana Second Congressional District, with Respondent, the Louisiana Secretary of State. The Notice of Candidacy included the certification that Fahrenholtz did "not owe any outstanding fines, fees or penalties pursuant to the Campaign Finance Disclosure Act."

2. On July 18, 2008, Respondent, Conrad S.P. Williams, III, filed a "Petition To Disqualify Candidate" against Fahrenholtz in a Louisiana state court. As required by law, La. R.S. 18:1402A(2), Respondent, Jay Dardenne, in his capacity as Secretary of State, was a party to the suit. The petition sought disqualification of Fahrenholtz's candidacy under La. R.S. 18:492(5) for falsely certifying on the notice of candidacy that he did not owe any outstanding fines, fees, or penalties pursuant to the Campaign Finance Disclosure Act.

3. On the morning of trial, Fahrenholtz filed "Peremptory Exception of No Cause of Action" alleging that La. R.S. 18:463(A)(2)(a) specifically exempts candidates for the United States House of Representatives from certifying that they do not owe any sums pursuant to the Campaign Finance Disclosure Act, and that the petition failed to set forth a cause of action to disqualify Fahrenholtz "for an alleged false certification of a matter which he is specifically exempted from." The memorandum in support of this

exception mentioned U.S. Const., Art. I, § 2, cl. 2, as providing the qualifications for members of Congress.

4. At trial on July 22, 2008, Fahrenholtz stipulated that he did owe approximately $15,000 in outstanding fines and fees. The trial judge found the certification made by Fahrenholtz on the notice of candidacy to be false. The exception of no cause of action was overruled and Fahrenholtz was disqualified as a candidate for Congress.

5. Fahrenholtz appealed to the Louisiana Fourth Circuit Court of Appeal. On July 25, 2008, the appellate court affirmed the judgment of the trial court. The opinion noted Fahrenholtz's claim made there that the certification was unconstitutional under U.S. Const., Art. I, § 2, cl. 2, "is not an issue under review by this court," finding that Fahrenholtz failed to satisfy requirements of Louisiana law for challenging constitutionality of a statute.

6. On July 30, 2008, the Louisiana Supreme Court denied Fahrenholtz's writ application. *Williams v. Fahrenholtz*, 2008-1680 (La. 7/30/98), 986 So.2d 671.

7. The Democratic Party Primary election for the Louisiana Second Congressional District was held on October 4, 2008, the election originally scheduled for September 6, 2008, having been rescheduled as a result of Hurricane Gustav.

REASONS FOR DENYING THE WRIT

I. The Federal Question Posed Was Neither Properly Presented To Nor Decided By The State Court

Whether jurisdictional, or prudential, subject to only very rare exceptions, in reviewing state court judgments under 28 U.S.C. § 1257(a), this Court will not consider a petitioner's federal claim "unless it was either addressed by, or properly presented to the state court that rendered the decision we have been asked to review." *Adams v. Robertson,* 520 U.S. 83, 86 (1997). The Louisiana courts did not address the federal constitutional question; the Louisiana appellate court stated "constitutionality is not an issue under review by this Court."

The state court's refusal to address the federal constitutional issue is explained in its opinion:

> "Mr. Fahrenholtz avers that the certification is an unconstitutional qualification. However, the constitutionality of a statute must first be questioned in the trial court and must be specifically pled. *Vallo v. Gayle Oil Co., Inc.*, 94-1238 (La. 11/30/94), 646 So.2d 859, 863. Specifically, 1) the constitutionality of a statute must first be questioned in the trial court, not the court of appeal; 2) the plea of unconstitutionality must be specifically pleaded to be considered by the trial court; and 3) the attorney general is an indispensable party who must be served." *Id., citing Lemire v. New Orleans Public Service,*

> *Inc.*, 458 So.2d 1308, 1311 (La. 1984). Mr. Fahrenholt's first mention of unconstitutionality was in a memorandum and not in a pleading, hence, constitutionality is not an issue under review by this Court. *Hillman v. Akins*, 93-0631 (La. 1/14/94), 631 So.2d 1, 5." *Williams v. Fahrenholtz*, 2008-0961, p. 4, n. 1 (La. App. 4 Cir. 7/25/08), 2008 WL 2861718, *2, n. 1.

The constitutional claim was not addressed by the state court as it was not properly presented to the state court under specific pleading requirements of Louisiana law. Fahrenholtz's claim that he had no opportunity to specifically plead the unconstitutionality of the state statute because there was no unconstitutional harm until after the state court rendered its decision is an argument that not only defies logic but is a misrepresentation. As noted in fn. 1 of the Louisiana appellate court opinion, Fahrenholtz did attempt to raise unconstitutionality in state court. But because Fahrenholtz urged unconstitutionality there in a memorandum and not a pleading, the Fourth Circuit found that "constitutionality is not an issue under review by this Court." Fahrenholtz did raise the constitutional issue in state court, he just did not raise it properly in order to have the state court consider the issue.

This Court "held early on that § 25 of the Judiciary Act of 1789 furnished us with no jurisdiction unless a federal question had been both raised and decided in the state court below. As Justice Story

wrote in *Crowell v. Randell,* 10 Pet. 368, 391, 9 L.Ed. 458 (1836), 'If both of these requirements do not appear on the record, the appellate jurisdiction fails.'" *Illinois v. Gates*, 462 U.S. 213, 218, 103 S.Ct. 2317, 2321, 76 L.Ed.2d 527 (1983).

Petitioner failed to carry his burden of showing that the federal question raised in the Petition for Certiorari was properly presented to or addressed by the Louisiana court.

CONCLUSION

The petition should be denied.

Respectfully submitted,

CELIA R. CANGELOSI
918 Government Street, Suite 101
P. O. Box 3036
Baton Rouge, LA 70821
(225) 387-0511
Counsel of Record

October, 2008